

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GREGORY D. ROSE,)	CASE NO. 1:09CV2084
)	
PETITIONER,)	JUDGE SARA LIOI
)	
vs.)	
)	ORDER
)	
)	
BENNIE KELLY, Warden,)	
)	
)	
RESPONDENT.)	

On September 9, 2009, petitioner Gregory Rose (petitioner) filed a Writ of *Habeas Corpus* pursuant to 28 U.S.C. § 2254. (Docket No. 1.) The case was referred to Magistrate Judge George Limbert pursuant to Local Rule 72. On July 2, 2010 the Magistrate Judge recommended that petitioner's application for *habeas corpus* be dismissed in its entirety without prejudice, unless petitioner elected to waive his unexhausted claim of ineffective assistance of appellate counsel and proceed with his exhausted claims (the balance of Ground One, Ground Two, Ground Three, and Ground Four). (Docket No. 11).

Petitioner failed to file objections to the Magistrate Judge's Report and Recommendation. On July 23, 2010, the Court entered an Order adopting the Report and Recommendation, and granting, in part, respondent's motion to dismiss. The Court also afforded petitioner leave until August 9, 2010 to indicate in writing that he is willing to waive his unexhausted claim of ineffective assistance. Petitioner was advised that failure

to timely respond would result in the dismissal of the petition without prejudice. Petitioner has failed to timely indicate in writing his willingness to dismiss the unexhausted claims. Consequently, petitioner's application for a Writ of *Habeas Corpus* is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated:



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE